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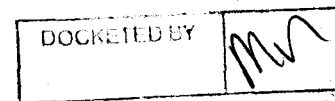
October 29, 2008

By Hand Delivery

Blessing N. Chukwu  
 Executive Consultant III  
 Arizona Corporation Commission  
 1200 West Washington Street  
 Phoenix, Arizona 85007-2927

Arizona Corporation Commission  
**DOCKETED**

OCT 29 2008



Re: Cross Creek Ranch Community Association ("CCRCA") – Application  
 for An Adjudication Not A Public Service Corporation Docket Nos. W-  
 20619A-08-0471 and W-04131A-08-0471: **Response to Letter of  
 insufficiency**

Dear Ms.Chukwu :

I am in receipt of your letter of insufficiency dated October 7, 2008, concerning the above-referenced matter. Please accept this letter and the responses contained herein as Cross Creek Ranch Community Association's response to your letter of insufficiency. Each request for information is addressed separately below:

1. *Please provide an executed copy of CCRCA's By-laws which restricts service to a specific area and membership.*

**RESPONSE:** An executed copy of CCRCA's Bylaws which restrict membership and service to the 84 Lots in Cross Creek Ranch is enclosed.

2. *Pursuant to Decision No. 55568, membership has to be restricted to a fixed number of customers actual or potential. Please direct Staff to where it is stated in the CC&R and/or its amendment. If not, please provide an Amendment to the CC&R that indicated that membership is restricted to the 84 potential customers.*

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**RESPONSE:** The Declaration<sup>1</sup> as amended by the proposed First Amendment restricts membership and service to the 84 Lots in the Cross Creek Ranch Subdivision as follows:

(a) Section 11 of the First Amendment provides to the "extent that the Declaration and this First Amendment conflict, this First Amendment shall govern and control."

(b) Paragraph 4 of the First Amendment to the Declaration only amended Section 2.2 of the Declaration (it does not supersede Section 2.2). Construed together, Section 2.2 provides:

**"Domestic Water Service.** Declarant shall, at its cost, construct and install a water delivery system, Including all production, pumping, treatment, storage, transmission, distribution, pressure and metering facilities, for the Project, and fire hydrants to provide both domestic water and fire protection water services to the Owners<sup>2</sup>, Lessees, Residents and Common Area (the 'Water System'). Upon completion of the Water System, Declarant, for and in consideration of the Water Company agreeing to provide water service to the Project, shall convey the Water System to the Water Company, the sole stockholder of which as of the date this Declaration is Recorded [July 1, 2003] is the Association, and the Water Company shall own and operate the Water System in accordance with all laws, rules and regulations promulgated by the applicable governmental authorities. The Water Company shall contract with qualified persons or companies to manage, operate and maintain the Water System. The cost of owning, maintaining and operating the Water System shall be paid for by the Water Company through charges to its customers for water usage and related services, and if applicable, through Water Company Assessments as set forth in Section 6.5 of this Declaration.

On and after the Effective Date [the date on which the First Amendment is Recorded], the Water System shall be owned and operated by the Association in accordance with all laws, rules and regulations promulgated by the applicable governmental authorities. The Association

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<sup>1</sup> Declaration of Covenants, Conditions and Restrictions for Cross Creek Ranch recorded in the official records of Yavapai County, Arizona at Instrument No. 3599928 in Book 4047 at Page 427.

<sup>2</sup> Owner means the record owner, whether own or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. (See Section 1.30 of the Declaration). A Lot means a portion of the Cross Creek Ranch subdivision intended for independent ownership and use for residential purposes and designated as a lot on the Plat [Plat of Cross Creek Ranch Subdivision recorded in Book 48 of Maps and Plats, pages 8 -14, official records of Yavapai County, Arizona] and as described on Exhibit "A" to the Declaration. (See Section 1.27 of the Declaration.)

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shall contract with qualified persons or companies to manage, operate, and maintain the Water System for the benefit of the Association. The cost of owning, maintaining and operating the Water System shall be paid for by the Association through Water Operating Assessments as set forth in Section 6.5 of the Declaration.”

Section 2.2 of the Declaration as amended by Paragraph 4 of the First Amendment construed together still restricted use of the Water System to the Owners of Lots in the Cross Creek Ranch subdivision or their lessees or tenants, and to support the Common Area maintenance. The Plat of the subdivision shows only 84 Lots. Hence, the Water system may only service the 84 Lots and the Common Areas.

(c) Paragraph 7 of the First Amendment to the Declaration amended Section 3.20 of the Declaration to provide:

“No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner and no portion less than all of any such Lot shall be conveyed or transferred by any Owner. No additional real property lying outside of the existing boundary for Cross Creek Ranch as originally shown on the Plat shall ever be annexed into Cross Creek Ranch. Two or more Lots shall not be combined into fewer Lots than originally shown on the Plat. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Lessee, or other Person other than the Board on behalf of the Association against any part of the property without the provisions thereof having been first approved in writing by the Architectural Review Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than by the Board of the Association with the prior written approval of the Architectural review Committee and the proposed use otherwise complies with the Declaration.”

Section 3.20 of the Declaration as amended by the First Amendment prevents the subdivision of the original 84 Lots. Moreover, Section 3.20 of the Declaration as amended by the First Amendment prohibits the annexation of any additional property into the subdivision. Therefore, the Water System may only serve the original 84 Lots in Cross Creek Ranch.

(d) In addition, paragraph 6 of the First Amendment further restricts water service to the 84 Lots. It provides:

“Except for certain Association irrigation purposes as provided in Section 4.10 of the Declaration, the Association shall be the sole provider

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of domestic water through the Water System for all Owners of Lots and Residential Units, Including any landscape irrigation water, subject to all fees, charges, rules, regulations and other requirements established by the Board, and if applicable, any Water Assessments adopted by the Board. No Lot shall contain any water well or water storage facility for such purpose. By acceptance of a deed or by acquiring any interest in a Lot, each Owner, Lessee and Resident agrees to be subject to the provisions of this Section. Each Owner, Lessee and Resident shall comply with all rules, regulations, and other requirements established by the Board for providing domestic water through the Water System."

The First Amendment to the Declaration does restrict the Water System to provide only service to the original 84 Lots as shown on the Plat. In addition, the First Amendment prohibits the further subdivision of the original 84 Lots or the annexation of additional lots into the subdivision, therefore, the Water System may not be expanded to serve additional properties or customers.

If you wish to discuss this request further, we would gladly arrange a meeting to discuss the First Amendment with you to address any additional questions you may have. Thank you for your consideration and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'Patrick J. Black', with a long horizontal line extending to the right.

Patrick J. Black

cc: Docket Control  
Paul Frieder  
Ed Hanley

**CROSS CREEK RANCH COMMUNITY ASSOCIATION**

**BYLAWS**

# CROSS CREEK RANCH COMMUNITY ASSOCIATION

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**BYLAWS**  
**OF**  
**CROSS CREEK RANCH COMMUNITY ASSOCIATION**

**ARTICLE 1**  
**GENERAL PROVISIONS**

**1.1 Principal Office.** The principal office of this corporation shall be located at the place as is designated in the Articles of Incorporation or such other place as the Association may designate from time to time in accordance with the Arizona statutes governing nonprofit corporations, but meetings of Members and directors may be held at such other place within the State of Arizona as may be designated by the Board of Directors.

**1.2 Defined Terms.** Capitalized terms used in these Bylaws without definition shall have the meanings specified for such terms in the Declaration of Covenants, Conditions and Restrictions for Cross Creek Ranch recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, Official Records of Yavapai County Recorder, Yavapai County, Arizona, as such Declaration may be amended from time to time.

**1.3 Conflicting Provisions.** In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**1.4 Corporate Seal.** The Association may have a seal in a form approved by the Board.

**1.5 Designation of Fiscal Year.** The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation of the Association.

**1.6 Records.** The books, records and papers of the Association, except those which by law may be withheld from disclosure, shall be available for inspection by any Member and his authorized agents during reasonable business hours at the principal office of the Association, where copies may be purchased at reasonable cost.

**1.7 Obligation of Association to Disclose Information.** Except for a sale of a Lot from the Declarant to a purchaser, the Association shall furnish to a purchaser, after receipt of a written notice of a pending sale that contains the name and address of the purchaser, a copy of the Project Documents and any other information that may be required by applicable law within the time period prescribed by such law. The Association may charge the Member a reasonable fee to compensate the Association for any costs incurred in the preparation of a statement furnished by the Association pursuant



to this Section. The Association shall make available to any interested party the amount of any such fee established from time to time by the Association.

### **1.8 Amendment.**

1.8.1 Until the Class B Membership has terminated, these Bylaws may be amended at any time by the Board without a vote of the Members. After the Class B Membership has terminated, these Bylaws may be amended at a regular or special meeting of the Members by a vote of the Members having more than 50% of the votes entitled to be cast by the Members present in person or by proxy.

1.8.2 The Declarant, so long as there is a Class B Membership, and thereafter the Board, without a vote of the Members and without the consent of any First Mortgagee, may amend these Bylaws in order to conform these Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by the Declarant or the Board.

1.8.3 So long as the Declarant owns any Lot or any other property within the Project, any amendment to these Bylaws must be approved in writing by the Declarant.

## **ARTICLE 2 MEETINGS OF MEMBERS**

2.1 **Annual Meeting.** An annual meeting of the Members of the Association shall be held at least once every twelve months on such date and at such time and place as is determined by the Board.

2.2 **Special Meetings.** Special meetings of the Members may be called at any time by the president or by the Board or upon written demand signed by Members having at least one-fourth (1/4) of the total authorized votes in the Association. The close of business on the thirtieth (30th) day before delivery of the demand or demands for a special meeting shall be the record date for the purpose of determining whether the demand for the special meeting has been signed by Members having at least one-fourth (1/4) of the total authorized votes in the Association.

2.3 **Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting by mailing a copy of each notice, postage prepaid, at least fifteen (15) days but no more than fifty (50) days before such meeting to each Member entitled to vote thereat addressed to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting, including the general nature of any proposed amendment to the Declaration, Articles or Bylaws, changes in Assessments that require approval of the

Members and any proposal to remove a director of the Association. When a meeting is adjourned to another date, time or place, notice of the new date, time or place need not be given of the adjourned meeting if the time and place of the meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Association may transact any business which might have been transacted at the original meeting. If a new record date for the adjourned meeting is or must be fixed under Subsection 2.6.2 below, the Association shall give notice of the adjourned meeting pursuant to this Section to persons who are Members as of the new record date. A Member's attendance at a meeting waives objection to the lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting and transacting business in the meeting. In addition, a Member's attendance at a meeting waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter at the time it is presented.

**2.4 Quorum.** Except as otherwise provided in the Articles, the Declaration or these Bylaws, the presence in person or by proxy of Members entitled to cast one-tenth (1/10th) of the total authorized votes in the Association shall constitute a quorum at all meetings of the Members. If a quorum shall not be present at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time until a quorum shall be present.

**2.5 Proxies.** At all meetings of the Members a vote may be cast in person or by proxy. A Member may appoint a proxy to vote or otherwise act for the Member by signing an appointment form, either personally or by the Member's attorney-in-fact. A proxy is valid for eleven months unless a shorter period is expressly provided in the appointment form. An appointment of a proxy is effective on receipt by the Secretary or other officer or agent authorized to tabulate votes. An appointment of a proxy is revocable unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointment of a proxy is revoked by the person who appoints a proxy by either (1) attending any meeting and voting in person or (2) signing and delivering to the Secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form. The death or incapacity of the Member who appoints a proxy shall not affect the right of the Association to accept the proxy's authority unless the Secretary or other officer or agent authorized to tabulate votes receives written notice of the death or incapacity before the proxy exercises authority under the appointment.

**2.6 Record Date.**

**2.6.1** For any meeting of the Members, the Board shall fix a date as the record date for determining the Members entitled to notice of the meeting. If the Board fails to fix a record date for any meeting of the Members, the record date for determining the Members entitled to notice of the meeting shall be the business day before the day on which the notice of the meeting is given. The Board also shall fix a date as the record date for determining the Members entitled to vote at a meeting of the Members. If the

Board fails to fix such a record date, the Members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

2.6.2 A determination of Members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting, unless the Board fixes a new date for determining the right to notice or the right to vote. The Board shall fix a new date for determining the right to notice or the right to vote if the meeting is adjourned to a date that is more than seventy (70) days after the record date for determining Members entitled to notice of the original meeting.

2.6.3 The Board shall fix a date as the record date for the purpose of determining the Members entitled to exercise any rights in respect of any other lawful action of the Members. If a record date is not fixed by the Board, Members at the close of business on the day on which the Board adopts the resolution relating to that record date, or the sixtieth (60) day before the date of other action, whichever is later, are entitled to exercise those rights.

2.6.4 The record date fixed by the Board under this Section shall not be more than seventy (70) days before the meeting or action requiring a determination of Members.

2.7 Organization and Conduct of Meeting. All Members attending a meeting of the Members shall register with the Secretary (or such person or persons as may be designated by the Secretary) prior to commencement of the meeting, and all proxies must be filed with the Secretary (or such person or persons as may be designated by the Secretary) prior to commencement of the meeting. After the meeting is called to order by the chair of the meeting, no further proxies or changes, substitutions or revocation of proxies shall be accepted. All meetings of the Members will be called to order and chaired by the President of the Association, or if there is no President or if the President is absent or so requests, then by the Vice President. If both the President and Vice President are not present at the meeting, any other officer of the Association or such Member of the Association as is appointed by the Board may call the meeting to order and chair the meeting. The chair of the meeting may appoint any person (whether or not a Member of the Association) to act as Recording Secretary. The chair of the meeting shall have the authority to determine the order of business to be conducted at the meeting and to establish reasonable rules for expediting the business of the meeting.

2.8 Action by Written Ballot. Any action that the Association may take at any annual, regular or special meeting of the Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be delivered to the Association in order to be counted, which time shall not be less than three (3) days after the date that the Association delivers the ballot. Once a written ballot has been received by the

Association, the ballot may not be revoked. Approval by written ballot pursuant to this Section is valid only if both the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action and the number of approvals equals or exceeds the number of votes which would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

## **2.9 Action by Written Consent.**

**2.9.1** The Members may approve any action required or permitted by law that requires the Members' approval without a meeting of the Members if the action is approved by Members holding at least a majority of the voting power in the Association, unless the Declaration, Articles, these Bylaws or applicable law require a different amount of voting power. The action shall be evidenced by one or more written consents describing the action taken, signed by those Members representing at least the requisite amount of the voting power, and delivered to the Association for inclusion in the minutes or filing with the corporate records of the Association.

**2.9.2** If not otherwise fixed by the Board pursuant to Section 2.6 above, the record date for determining Members entitled to take action without a meeting is the date the first Member signs the consent to the action. A consent signed under this Section has the effect of a meeting vote and may be described as such in any document. Written notice of Member approval pursuant to this Section shall be given to all Members who have not signed the written consent. Unless otherwise specified in the consent or consents, the action is effective on the date that the consent or consents are signed by the last Member whose signature results in the requisite amount of the voting power. Any Member may revoke the Member's consent by delivering a signed revocation of the consent to the President or Secretary before the date that the consent or consents are signed by the last Member whose signature results in the requisite amount of the voting power.

**2.10 Voting Requirements.** Unless otherwise provided in the Project Documents, if a quorum is present at a meeting of the Members, the affirmative vote of a majority of the votes represented and voting is the act of the Members.

## **ARTICLE 3 BOARD OF DIRECTORS**

**3.1 Number.** The affairs of this Association shall be managed by a board of directors consisting of a minimum of one (1) and a maximum of nine (9) directors. Until the termination of the Class B Membership, the directors need not be Members of the Association. After the termination of the Class B Membership, all directors must be Members of the Association. The Board may increase or decrease the number of directors on the Board but the number of directors must always be an odd number and shall not be less than one (1) or more than nine (9).

3.2 Appointment and Election. Until the termination of the Class B Membership, the Declarant shall have the right to appoint and remove the members of the Board. After the termination of the Class B Membership, the directors shall be elected by the Members at the annual meeting of the Members.

3.3 Term of Office. Directors appointed by the Declarant shall hold office until their successors are elected and qualify. In the first election of directors by the Members, the directors shall be divided into two or more classes with staggered terms of office for a term of one, two or three years. The directors elected by the Members in the first election of directors shall be assigned to one of the classes of directors based on the total number of votes each director receives with the directors receiving the highest total number of votes being assigned to the class with the longest term. In the case of a tie in the number of votes received by candidates, election and assignment of the term of the director shall be decided by lot. In each election of directors thereafter, directors shall be elected for a term of two years. If the number of directors is increased by the Board, the Board shall assign each of the newly created directorships to one of the classes of directors so that the number of directorships in each class is reasonably consistent.

3.4 Resignation of Directors. A director may resign at any time by delivering written notice to the Board, its presiding officer or the Association. A resignation is effective when the notice is delivered unless the notice specifies a later effective date or event. If a resignation is made effective at a later date, the Board may fill the pending vacancy before the effective date if the Board provides that the successor does not take office until the effective date.

3.5 Removal of Directors. Except for directors appointed by the Declarant, any one or more of the members of the Board may be removed from the Board with or without cause by Members having more than fifty percent (50%) of the votes entitled to be cast by the Members present in person or by proxy at a meeting of the Members called for such purpose, and a successor may then and there be elected to fill the vacancy thereby created.

3.6 Compensation. No director shall receive compensation for any service he may render to the Association, unless such compensation is approved by Members having more than fifty percent (50%) of the votes entitled to be cast by the Members present in person or by proxy at a meeting of the Members. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

3.7 Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written consent of all the directors. Any such written consent shall be filed with the minutes of the proceedings of the Board.

3.8 Vacancies. Except for vacancies on the Board caused by the removal of a director in accordance with the provisions of Section 3.5 of these Bylaws, any vacancy occurring in the Board may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum (as defined in Section 3.10) or by a sole

remaining director, and any director so chosen shall hold office for the unexpired portion of the term of the director being replaced. Any newly created directorship should be deemed a vacancy and the Board may fill the vacancy for the term assigned to the directorship pursuant to Section 3.3 of these Bylaws. When one or more directors resigns from the Board, effective at a future time, a majority of the directors then in office, including those who have so resigned, may fill such vacancy, the vote on the vacancy to take effect when such resignation becomes effective. If by reason of death, resignation or otherwise, the Association has no directors in office, any officer or Member may call a special meeting of the Members for the purpose of electing the Board.

### 3.9 Meetings.

3.9.1 If the time and place of a meeting of the Board is fixed by the Board, the meeting is a regular meeting. All other meetings of the Board are special meetings. Until the termination of the Class B Membership, regular and special meetings of the Board may be held without notice of the date, time, place or purpose of the meeting.

3.9.2 After the termination of the Class B Membership, special meetings of the Board may be called by the President on two (2) business days notice to each director, given in writing, by hand delivery, mail or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) directors.

3.9.3 A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting or promptly on the director's arrival at the meeting objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

3.9.4 A director may participate in a regular or special meeting of the Board through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting, and a director participating in a meeting by such means is deemed to be present in person at the meeting.

3.9.5 After the termination of the Class B Membership, notice of meetings of the Board shall be given to the Members of the Association within such time and in such manner as is required by law.

3.10 Quorum and Voting. A majority of the prescribed number of directors shall constitute a quorum for the transaction of business. If a quorum is present when a meeting is convened, the quorum shall be deemed to exist until the meeting is adjourned, notwithstanding the departure of one or more directors. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the Board unless the Articles or Bylaws require the vote of a greater number of directors. A

director who is present at a meeting of the Board when corporate action is taken is deemed to have assented to the action taken unless either: (1) the director objects at the beginning of the meeting or promptly on the director's arrival to holding it or transacting business at the meeting; (2) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the Association before 5:00 P.M. on the next business day after the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken. A director may vote in person or by proxy. A director may appoint a proxy to vote or otherwise act for the director by signing an appointment form, either personally or by the director's attorney-in-fact. The appointment does not relieve the director of liability for acts or omissions imposed by law on directors. An appointment of a proxy is effective when received by the Secretary. An appointment is valid for one (1) month unless a different period is expressly provided in the appointment form. An appointment of a proxy is revocable by the director. The death or incapacity of a director appointing a proxy shall not affect the right of the Association to accept the proxy's authority unless written notice of death or incapacity is received by the Secretary before the proxy exercises its authority under the appointment. Subject to any express limitation on the proxy's authority appearing on the face of the appointment form, the Association is entitled to accept the proxy's vote or other action as the vote of the director making the appointment.

**3.11 Powers and Duties.** The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association and may exercise all corporate powers of the Association, subject to any limitation set forth in the Project Documents. In addition to the duties imposed by these Bylaws or by any resolution of the Members that may hereafter be adopted, the Board shall have the following powers and duties:

**3.11.1** Open bank accounts on behalf of the Association and designate the signatories thereon;

**3.11.2** Make, or contract for the making of, repairs, additions to, improvements to or alterations of the Common Area and Areas of Association Responsibility, in accordance with the Project Documents, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

**3.11.3** In the exercise of its discretion, enforce by legal means the provisions of the Project Documents;

**3.11.4** Designate, hire and dismiss the personnel necessary for the maintenance, operation, repair and replacement of the Common Area and Areas of Association Responsibility and provide services for the Members, and where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties;

3.11.5 Provide for the operation, care, upkeep and maintenance of all of the Common Area and Areas of Association Responsibility and borrow money on behalf of the Association when required in connection with any one instance relating to the operation, upkeep and maintenance for the Common Area and Areas of Association Responsibility; provided, however, the consent of Members having at least two-thirds (2/3) of the total votes in the Association shall be obtained either in writing or at a meeting called and held for such purpose in accordance with the provisions of these Bylaws in order for the Association to borrow in excess of \$5,000;

3.11.6 Prepare and adopt an annual budget for the Association prior to the commencement of each fiscal year;

3.11.7 Adopt and publish rules and regulations governing the use of the Common Area and Areas of Association Responsibility and the personal conduct of the Members, Residents and their family members, guests, lessees and invitees thereon and establish penalties for the infraction thereof;

3.11.8 Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of the Project Documents, including, without limitation, exercising all powers, duties and authority vested in the Association as a shareholder of the Water Company;

3.11.9 Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board;

3.11.10 Employ, hire and dismiss such employees as they deem necessary and to prescribe their duties and their compensation;

3.11.11 Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by any Member entitled to vote;

3.11.12 Supervise all officers, agents and employees of the Association and see that their duties are properly performed;

3.11.13 Levy, collect and enforce the payment of Assessments in accordance with the provisions of the Declaration;

3.11.14 Issue, or cause an appropriate officer to issue upon demand to any person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

3.11.15 Procure and maintain adequate property, liability and other insurance as required by the Declaration;



3.11.16 Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

3.11.17 Cause the Common Area and all other Areas of Association Responsibility to be maintained, as more fully set forth in the Declaration.

3.12 Managing Agent. The Board may employ for the Association and the Project a "Managing Agent" at a compensation established by the Board. The Managing Agent shall perform such duties and services as the Board shall authorize, including, but not limited to, all of the duties listed in the Project Documents except for such duties and services that under the Project Documents may not be delegated to the Managing Agent. The Board may delegate to the Managing Agent all of the powers granted to the Board or the officers of the Association by the Project Documents other than the power (i) to adopt the annual budget, any amendment thereto or to levy Assessments; (ii) to adopt, repeal or amend Association Rules; (iii) to designate signatories on Association bank accounts; (iv) to borrow money on behalf of the Association; (v) to acquire real property. So long as the Declarant owns any Lot or any other property in the Project, any change in the Managing Agent must be approved in writing by the Declarant.

#### ARTICLE 4 OFFICERS AND THEIR DUTIES

4.1 Enumeration of Officers. The principal officers of the Association shall be the president, the vice president, the secretary and the treasurer, all of whom shall be elected by the Board. The president must be a member of the Board. Any other officers may, but need not, be members of the Board.

4.2 Election of Officers. After termination of the Class B Membership, the election of officers shall take place at the first meeting of the Board following the election of directors by the Members. Thereafter, officers shall be elected at the first meeting of the Board following each annual meeting of the Members.

4.3 Term. Except for officers appointed by the Board prior to the termination of the Class B Membership, which officers shall serve until their successors are qualified and elected, the officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

4.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

4.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Association. A resignation is effective when the notice is delivered unless the notice specifies a later date or event. The acceptance of a resignation shall not be necessary to make it effective. If a resignation is made effective at a later date or event

and the Board accepts the later effective date, the Board may fill the pending vacancy before the effective date if the Board provides that the successor shall not take office until the effective date.

4.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

4.7 Multiple Offices. The same individual may simultaneously hold more than one office in the Association.

4.8 Powers and Duties. To the extent such powers and duties are not assigned or delegated to a Managing Agent pursuant to Section 3.12 of these Bylaws, the powers and duties of the officers shall be as follows:

4.8.1 President. The president shall be the chief executive officer of the Association; shall preside at all meetings of the Board or the Members; shall see that orders and resolutions of the Board are carried into effect; and have general and active management of the business of the Association;

4.8.2 Vice-President. The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board;

4.8.3 Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board;

4.8.4 Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds for appropriate Association purposes as set forth in the Project Documents; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members; and, in general, perform all the duties incident to the office of treasurer.

## ARTICLE 5 FINES

5.1 Power of Board to Impose Fines. Pursuant to the power granted to the Board by the Declaration, the Board shall have the right to impose reasonable fines against an Owner for a violation of any provision of the Project Documents by the Owner, a Lessee of the Owner or by any Resident of the Owner's Lot.

5.2 Notice of Violation.

5.2.1 The Board, or any person designated by the Board, may serve a "Notice of Violation" against an Owner for a violation of any provision of the Project Documents by the Owner, a Lessee of the Owner or by any Resident of the Owner's Lot. A Notice of Violation shall contain (i) a description of the violation, (ii) the approximate time and place at which the violation was observed, (iii) the amount of the fine to be paid by the Owner for such violation, (iv) the name of the person issuing the Notice of Violation, and (v) a statement advising the Owner of the Owner's right to request a hearing pursuant to Subsection 5.2.4 of these Bylaws.

5.2.2 A Notice of Violation shall be deemed to have been served if delivered personally to the Owner named in the Notice of Violation or sent to the Owner by registered or certified United States mail, return receipt requested, postage prepaid. A Notice of Violation served by mail shall be deemed to have been received by the Owner to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is deposited in the United States mail. A Notice of Violation given by mail shall be addressed to the Owner at the address of the Owner as shown on the records of the Association. If a Lot is owned by more than one person or entity, a Notice of Violation to one of the joint Owners shall constitute notice to all of the joint Owners.

5.2.3 The Owner shall pay the fine set forth in the Notice of Violation to the Association within ten (10) days after the Notice of Violation is served on the Owner unless prior to that time the Owner requests a hearing on the violation pursuant to Subsection 5.2.4 of the Bylaws.

5.2.4 Any Owner served with a Notice of Violation may request a hearing on the violation. The request for a hearing must be addressed to the Secretary of the Association and must be actually received by the Association within ten (10) days after the service of the Notice of Violation. Upon receipt of a request for a hearing pursuant to this Section, the President or any other officer of the Association shall schedule a hearing on the violation before the Board or before a hearing officer or a committee approved by the Board and shall notify the Owner requesting the hearing of the date, time and place of the hearing. The notice of the hearing also shall advise the Owner of his right to produce statements, evidence and witnesses on his behalf and to be represented at the hearing by an attorney. If the hearing on the violation is before the Board, then the minutes of the meeting of the Board at which the hearing is held shall reflect the fact that the hearing on the violation was held and the action taken by the Board on the violation. If the hearing is held before a hearing officer or a committee appointed by the Board, then the hearing officer of the committee conducting the hearing shall, within ten (10) days after the conclusion of the hearing, make a written recommendation to the Board on what action the Board should take in the violation. Upon receipt of the recommendation from the hearing officer or the committee, the Board shall act upon the recommendation. Any fine which is affirmed by the Board following a hearing pursuant to this Section shall be paid by the offending Owner within ten (10) days after a notice of the action of the Board is served upon the Owner. Service of the notice from the Board shall be made in the same manner as service of a Notice of Violation pursuant to Subsection 5.2.2 of these Bylaws.

5.2.5 Any fines imposed pursuant to this Article 5 shall be the joint and several liability of all of the joint Owners of a Lot.

## ARTICLE 6 COMMITTEES OF THE BOARD

6.1 Appointment of Committees. The Board may create one or more committees and appoint Members, members of the Board or any other person to serve on them. Each committee shall have one or more members, and each member of a committee shall serve at the pleasure of the Board. The creation of a committee and appointment of members of the Board to the committee must be approved by the greater of: (1) a majority of all the directors in office when the action is taken; or (2) the number of directors required by Section 3.10 above to take action.

6.2 Proceedings of Committees. The provisions of these Bylaws governing meetings, action without meetings and notice, waiver of notice, quorum and voting requirements of the Board also shall apply to committees and their members.

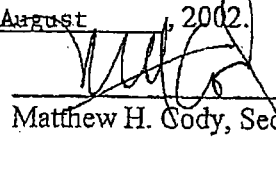
6.3 Authority of Committees. Each committee of the Board may exercise the authority of the Board to the extent specified by the Board or the Declaration, except that a committee shall not take any of the following actions: (1) authorize distributions; (2) approve or recommend to the Members any action that requires the Members' approval under the Project Documents or by law; (3) fill vacancies on the Board or on any of its committees; (4) adopt, amend or repeal these Bylaws; and (5) fix the compensation of directors for serving on the Board of Directors or any committee of the Board.

6.4 Alternate Members. The Board may designate one or more directors as alternate members of any committee who may replace any absent member at any meeting of the committee.

6.5 Compensation. Members of committees shall not be entitled to compensation for their services unless such compensation is approved by the greater of: (1) a majority of all the directors in office when the action is taken; or (2) the number of directors required by Section 3.10 above to take action. However, any member of a committee may be reimbursed for his actual expenses incurred in the performance of his duties.

## CERTIFICATION

I hereby certify that the foregoing Bylaws were duly adopted by the Board of Directors of the Association on the 13th day of August, 2002.

  
Matthew H. Cody, Secretary